

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH

CSA No 28 of 2018

In the matter of the Companies Act,
2013

AND

In the matter of Scheme of Arrangement
between Hypercity Retail (India) Limited
(‘Demerged Company’) and Future Retail
Limited (‘Resulting Company’ or
‘Applicant Company’) and their
respective shareholders

FUTURE RETAIL LIMITED, a company incorporated
under the provisions of Companies Act, 1956 having
its registered address at Knowledge House, Shyam
Nagar, Off Jogeshwari – Vikhroli Link Road, Jogeshwari
(East), Mumbai – 400 060

.....Resulting Company/Applicant Company

Order delivered on 8th February, 2018

Coram:

Hon’ble Shri. **B.S.V Prakash Kumar**, Member (J)

Hon’ble Shri. **V. Nallasenapathy**, Member (T)

For the Applicant: Mrs. Alpana Ghone, Counsel with Mr. Hemant Sethi i/b
Hemant Sethi & Co.

Per: V. Nallasenapathy, Member (T)

ORDER

1. The Counsel for the Applicant states that the present Scheme is a Scheme of Arrangement between wholly owned subsidiary company namely, Hypercity Retail (India) Limited (‘Demerged Company’) with its holding company namely Future Retail Limited (‘Resulting Company’ or ‘Applicant

Company') and their respective Shareholders under the provisions of Sections 230 to 232 of the Companies Act, 2013.

2. The Counsel for the Applicant further submits that the Demerged Company is engaged in retailing a variety of household and consumer products through hypermarket stores and property options business. The Transferee Company currently operates multiple retail formats in the Indian consumer market under different brand names including: Big Bazaar; FBB; Food Bazaar; Foodhall; easyday; and eZone.
3. The Counsel for the Applicant further submit that the Demerged Company is a wholly owned subsidiary of the Applicant Company and entire share capital of the Demerged Company is owned and controlled by the Applicant Company.
4. The Counsel for the Applicant further submits that the rationale for the Scheme is as under:
 - a) Demerged Company is inter-alia engaged in retailing a variety of household and consumer products through hypermarket stores and property options business. Demerged Company currently operates through 19 such stores located in different cities of India. The entire paid up equity share capital of Demerged Company is held by Applicant Company alongwith its nominees.
 - b) Applicant Company currently operates multiple retail formats in the Indian consumer market under different brand names including: Big Bazaar; fbb; Food Bazaar; easyday, Foodhall; and eZone.
 - c) Applicant Company has in principle approved sale of all shares of Demerged Company with the Remaining Undertaking of Demerged Company during the financial year 2017-18. The sale of shares is subject to receipt of requisite approvals to this Scheme and the same being made effective, which *inter-alia* contemplates transfer and vesting of Retail Business Undertaking from Demerged Company to Applicant Company.
 - d) Demerger of the Retail Business Undertaking from Demerged Company into Applicant Company shall have the following benefits:
 - i. consolidation of retail operations of Applicant Company and Demerged Company in a single entity;
 - ii. streamlining the operating structure; and
 - iii. synergies expected to bring in cost savings in the marketing, selling and distribution expenses as well as give benefits of the economies of scale to the Company.

5. The Applicant respectfully submits that:
 - a. Being a demerger of a division of the wholly owned subsidiary company into its holding company, no shares would be issued or allotted as consideration pursuant to the demerger. Accordingly, the rights of members of the Applicant Company are not affected since there will be no issue of shares pursuant to the Scheme and there would be absolutely no change in the equity share capital of the Applicant Company. Also the present Scheme will not result in any dilution in shareholding of the public shareholders of the Applicant Company.
 - b. The rights of the creditors of the Applicant Company are not affected since there will be no reduction in their claims and the assets of the Applicant Company, post the Scheme, will be more than sufficient to discharge their claims. Also, the net worth of the Applicant Company is presently positive and is expected to remain positive post the Scheme.
 - c. The existence of the Applicant Company will remain as before without any change to its shareholding pattern pursuant to the Scheme.

6. The Counsel for the Applicant Company submits that in view of above, no reconstruction or arrangement happens with its shareholders or creditors, and thus, it does not require to hold either shareholders' meeting or creditors' meeting for approval of the proposed Scheme, in view of ratio laid down by this Tribunal in *CSA NO 243 of 2017* in the matter of Housing Development Finance Corporation Limited, *CSA NO 899 of 2017* in the matter of Mahindra CIE Automotive Limited and *CSA NO 915 of 2017* in the matter of Godrej Consumer Products Limited. The Counsel for the Applicant Company submits that the facts in the present case are similar to the facts of above case(s), therefore no meeting of shareholders and creditors of the Applicant Company is required to be convened. The Counsel for the Applicant Company further clarifies that the Applicant Company will file petition and comply with the provisions of service of notices upon all Regulatory Authorities.

7. The Applicant Company is accordingly directed to serve notices along with the documents as mentioned (a) the draft of the proposed terms of the Scheme drawn up and adopted by the Board of Directors; (b) confirmation that a copy of the draft Scheme has been filed with the Registrar; (c) a report adopted by the Directors of the Applicant Company explaining the effect of the Scheme on each class of shareholders, key managerial personnel, promoters and non-promoter shareholders laying out in particular the share exchange ratio, specifying any special valuation

difficulties; (d) the report of the expert with regard to valuation, if any; (e) a supplementary accounting statement, if any, if the last annual accounts of any of the companies relate to a financial year ending more than 6 months before the date of service of notice, upon:- (i) concerned Income Tax Authority with in whose jurisdiction the Applicant Company's assessments are made, (ii) the Central Government through the office of Regional Director, Western region, Mumbai, (iii) Registrar of Companies, (iv) BSE Limited, (v) National Stock Exchange of India Limited, and (vi) Securities and Exchange Board of India, with a direction that they may submit their representations, if any, within a period of thirty days from the date of receipt of such notice to the Tribunal with copy of such representations shall simultaneously be served upon the Applicant Company, failing which, it shall be presumed that the authorities have no representations to make on the proposals.

8. The Applicant Company to file affidavit of service in the Registry proving service of notice to the regulatory authorities as stated in Clauses 7 above and do report to this Tribunal that the directions regarding the issue of notices have been duly complied with.

Sd/-

V. Nallasenapathy, Member (T)

Date: 8th February, 2018

Sd/-

B.S.V. Prakash Kumar, Member (J)